

(3) Engine displacement (in liters), rated power, and model year of the engine or whom to contact for further information.

(4) One of the following statements:

(i) If the engine does not meet any emission standards: “THIS ENGINE IS EXEMPT UNDER 40 CFR 1068.255 FROM EMISSION STANDARDS AND RELATED REQUIREMENTS.”.

(ii) If the engine meets alternate emission standards as a condition of an exemption under this section, we may specify a different statement to identify the alternate emission standards.

(c) *Secondary engine manufacturers.* As a secondary engine manufacturer, you may ask for approval to produce exempted engines under this section for up to 12 months. We may require you to certify your engines to compliance levels above the emission standards that apply. For example, the in the case of multiple tiers of emission standards, we may require you to meet the standards from the previous tier.

(1) For the purpose of this section, a secondary engine manufacturer is a manufacturer that produces an engine by modifying an engine that is made by a different manufacturer for a different type of application. This includes, for example, automotive engines converted for use in industrial applications, or land-based engines converted for use in marine applications. This applies whether the secondary engine manufacturer is modifying a complete or partially complete engine and whether the engine was previously certified to emission standards or not. To be a secondary engine manufacturer, you must not be controlled by the manufacturer of the base engine (or by an entity that also controls the manufacturer of the base engine). In addition, equipment manufacturers that substantially modify engines become secondary engine manufacturers. For the purpose of this definition, “substantially modify” means changing an engine in a way that could change its emission characteristics.

(2) The provisions in paragraph (a) of this section that apply to equipment manufacturers requesting an exemption apply equally to you, except that you may manufacture the engines. Before we can approve the exemption

under this section, you must commit to a plan to make up the lost environmental benefit.

(i) If you produce uncertified engines under this exemption, we will calculate the lost environmental benefit based on our best estimate of uncontrolled emission rates for your engines.

(ii) If you produce engines under this exemption that are certified to a compliance level less stringent than the emission standards that would otherwise apply, we will calculate the lost environmental benefit based on the compliance level you select for your engines.

(3) The labeling requirements in paragraph (b) of this section apply to your exempted engines; however, if you certify engines to specific compliance levels, state on the label the compliance levels that apply to each engine.

[67 FR 68347, Nov. 8, 2002, as amended at 69 FR 39268, June 29, 2004; 70 FR 40514, July 13, 2005]

**§ 1068.260 What are the provisions for temporarily exempting engines for delegated final assembly?**

(a) Shipping an engine separately from an aftertreatment component that you have specified as part of its certified configuration will not be a violation of the prohibitions in § 1068.101(a)(1), if you do all the following:

(1) Apply for and receive a certificate of conformity for the engine and its emission-control system before shipment.

(2) Provide installation instructions in enough detail to ensure that the engine will be in its certified configuration if someone follows these instructions.

(3) Have a contractual agreement with an equipment manufacturer obligating the equipment manufacturer to complete the final assembly of the engine so it is in its certified configuration when installed in the equipment. This agreement must also obligate the equipment manufacturer to provide the affidavits and cooperate with the audits required under paragraph (a)(6) of this section.

(4) Include the cost of all aftertreatment components in the cost of the engine.

(5) Ship the aftertreatment components directly to the equipment manufacturer, or arrange for separate shipment by the component manufacturer to the equipment manufacturer.

(6) Take appropriate additional steps to ensure that all engines will be in their certified configuration when installed by the equipment manufacturer. At a minimum do the following:

(i) Obtain annual affidavits from every equipment manufacturer to whom you sell engines under this section. Include engines that you sell through distributors or dealers. The affidavits must list the part numbers of the aftertreatment devices that equipment manufacturers install on each engine they purchase from you under this section.

(ii) If you sell more than 50 engines per model year under this section, you must annually audit four equipment manufacturers to whom you sell engines under this section. To select individual equipment manufacturers, divide all the affected equipment manufacturers into quartiles based on the number of engines they buy from you; select a single equipment manufacturer from each quartile each model year. Vary the equipment manufacturers you audit from year to year, though you may repeat an audit in a later model year if you find or suspect that a particular equipment manufacturer is not properly installing aftertreatment devices. If you sell engines to fewer than 16 equipment manufacturers under the provisions of this section, you may instead set up a plan to audit each equipment manufacturer on average once every four model years. Audits must involve the assembling companies' facilities, procedures, and production records to monitor their compliance with your instructions, must include investigation of some assembled engines, and must confirm that the number of aftertreatment devices shipped were sufficient for the number of engines produced. Where an equipment manufacturer is not located in the United States, you may conduct the audit at a distribution or port facility in the United States. You must keep records of these audits for five years after the end of the model year and provide a report to us describing

any uninstalled or improperly installed aftertreatment components. Send us these reports within 90 days of the audit, except as specified in paragraph (d) of this section.

(iii) If you sell up to 50 engines per model year under this section, you must conduct audits as described in paragraph (a)(6)(ii) of this section or propose an alternative plan for ensuring that equipment manufacturers properly install aftertreatment devices.

(iv) If you produce engines and use them to produce equipment under the provisions of this section, you must take steps to ensure that your facilities, procedures, and production records are set up to ensure compliance with the provisions of this section, but you may meet your auditing responsibilities under this paragraph (a)(6) by maintaining a database showing how you pair aftertreatment components with the appropriate engines.

(7) Describe the following things in your application for certification:

(i) How you plan to use the provisions of this section.

(ii) A detailed plan for auditing equipment manufacturers, as described in paragraph (a)(6) of this section.

(iii) All other steps you plan to take under paragraph (a)(6) of this section.

(8) Keep records to document how many engines you produce under this exemption. Also, keep records to document your contractual agreements under paragraph (a)(3) of this section. Keep all these records for five years after the end of the model year and make them available to us upon request.

(9) Make sure the engine has the emission control information label we require under the standard-setting part. Apply an additional temporary label or tag in a way that makes it unlikely that the engine will be installed in equipment other than in its certified configuration. The label or tag must identify the engine as incomplete and include a clear statement that failing to install the aftertreatment device, or otherwise bring the engine into its certified configuration, is a violation of federal law subject to civil penalty.

(b) An engine you produce under this section becomes new when it is fully

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assembled, except for aftertreatment devices, for the first time. Use this date to determine the engine's model year.

(c) Once the equipment manufacturer takes possession of an engine exempted under this section, the exemption expires and the engine is subject to all the prohibitions in 40 CFR 1068.101.

(d) You must notify us within 15 days if you find from an audit or another source that an equipment manufacturer has failed to meet its obligations under this section.

(e) We may suspend, revoke, or void an exemption under this section, as follows:

(1) We may suspend or revoke your exemption for the entire engine family if we determine that any of the engines are not in their certified configuration after installation in the equipment, or if you fail to comply with the requirements of this section. If we suspend or revoke the exemption for any of your engine families under this paragraph (d), this exemption will not apply for future certificates unless you demonstrate that the factors causing the nonconformity do not apply to the other engine families. We may suspend or revoke the exemption for shipments to a single facility where final assembly occurs.

(2) We may void your exemption for the entire engine family if you intentionally submit false or incomplete information or fail to keep and provide to EPA the records required by this section.

(f) You are liable for the in-use compliance of any engine that is exempt under this section.

(g) It is a violation of the Act for any person to complete assembly of the exempted engine without complying fully with the installation instructions.

(h) You may ask us to provide a temporary exemption to allow you to complete production of your engines at different facilities, as long as you maintain control of the engines until they are in their certified configuration. We may require you to take specific steps to ensure that such engines are in their certified configuration before reaching the ultimate purchaser. You may request an exemption under this paragraph (h) in your application for cer-

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tification, or in a separate submission to the Designated Compliance Officer.

[69 FR 39268, June 29, 2004, as amended at 70 FR 40514, July 13, 2005]

### § 1068.265 What provisions apply to engines that are conditionally exempted from certification?

Engines produced under an exemption for replacement engines (§ 1068.240) or for hardship (§ 1068.245, § 1068.250, or § 1068.255) may need to meet alternate emission standards as a condition of the exemption. The standard-setting part may similarly exempt engines from all certification requirements, or allow us to exempt engines from all certification requirements for certain cases, but require the engines to meet alternate standards. In these cases, all the following provisions apply:

(a) Your engines must meet the alternate standards we specify in (or pursuant to) the exemption section, and all other requirements applicable to engines that are subject to such standards.

(b) You need not apply for and receive a certificate for the exempt engines. However, you must comply with all the requirements and obligations that would apply to the engines if you had received a certificate of conformity for them, unless we specifically waive certain requirements.

(c) You must have emission data from test engines using the appropriate procedures that demonstrate compliance with the alternate standards, unless the engines are identical in all material respects to engines that you have previously certified to standards that are the same as, or more stringent than, the alternate standards.

(d) Unless we specify otherwise elsewhere in the standard-setting part, you must meet the labeling requirements in the standard-setting part, with the following exceptions:

(1) Modify the engine-family designation by eliminating the character that identifies the model year.

(2) See the provisions of the applicable exemption for appropriate language to replace the compliance statement otherwise required in the standard-setting part.